

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2011-479-E

Office of Regulatory Staff,)
)
Complainant/Petitioner,)
)
vs.)
)
Mill Creek Marina & Campground, Inc.)
and/or Richard B. and Diane W. Anderson,)
)
Defendants/Respondents.)
_____)

**RESPONDENTS' OPPOSITION TO
PETITIONS FOR REHEARING AND
RECONSIDERATION**

Mill Creek Marina & Campground, Inc. and/or Richard B. and Diane W. Anderson (hereinafter collectively "Mill Creek") oppose the Office of Regulatory Staff ("ORS") and Intervenor Brian Pearson's ("Pearson") Petitions for Rehearing and Reconsideration (the "Petitions"). The Commission should deny the Petitions and should affirm its Order Dismissing Petition for Rule to Show Cause.

As a preliminary matter, Mill Creek objects to the materials and arguments filed by South Carolina Electric & Gas Company ("SCE&G"), Duke Energy Carolina, LLC ("Duke Energy"), Progress Energy Carolinas, Inc. ("Progress Energy"), and The Electric Cooperatives of South Carolina, Inc. ("the Cooperatives") in support of ORS's Petition. None of the above-named entities have been granted permission to intervene in this action and none of them should be permitted to intervene at this late date. Dissatisfaction with an order of the Commission is not a sufficient basis to intervene, nor is it appropriate justification to assert a position in a petition for rehearing and reconsideration in which they are not parties. This is a matter between ORS and a single campground in South

Carolina. The Commission should disregard all materials submitted by the above-referenced entities.

The Petitions lack merit and should be denied summarily. A petition for rehearing or reconsideration must set forth the following: (a) the factual and legal issues forming the basis for the petition; (b) the alleged error or errors in the Commission order; and (c) the statutory provision or other authority upon which the petition is based. 26 S.C. Code Ann. Regs. 103-825(A)(4). ORS and Pearson have failed to set forth any legitimate reasons for contending that the Commission's order contains legal or factual errors. ORS and Pearson essentially make the same legal arguments made previously. Clearly, the same oft-tried arguments do not rise to the legal threshold supporting rehearing or reconsideration.

ORS argues that the Commission erred in holding that S.C. Code Ann. § 58-27-10(7) excludes Mill Creek from the definition of "electrical utility." ORS contends that, pursuant to Section 58-27-10(7), Mill Creek "cannot resell electricity to its lessees without becoming an electrical utility." First, contrary to ORS and Pearson's position, there is no evidence in the record that Mill Creek "resells" electricity. The record establishes merely that Mill Creek passes the costs of providing electricity onto its tenants.

Moreover, Section 58-27-10(7) defines electrical utility to include "persons and corporations . . . owning or operating in this State equipment or facilities for generating, transmitting, delivering, or furnishing electricity for street, railway, or other public uses for the production of light, heat, or power to or for the public for compensation." (emphasis added). Therefore, an entity will only be considered an "electrical utility" if it

provides electricity “for compensation.” There is no evidence in the record that Mill Creek provided electricity for compensation to its tenants. Accordingly, the Commission need not even reach the issue of whether the exception for corporations providing electricity to their tenants applies in this case. Mill Creek does not fall within the definition of electrical utility because there is no evidence in the record that Mill Creek is providing electricity “for compensation.”

At the hearing in this matter, ORS’s witness A. Randy Watts (“Watts”) argued that Mill Creek provides electricity “for compensation,” but he conceded that the term “for compensation” contained in § 58-27-10(7) is ambiguous. (Transcript p. 56, lines 17 – 25.) “Where a statute is ambiguous, the Court must construe the terms of the statute.” Wade v. Berkeley County, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002). “An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law.” Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 231, 612 S.E.2d 719, 724 (Ct. App. 2005).

Watts’ interpretation of the meaning of the term “for compensation” strains logic. According to Watts, Mill Creek is providing electricity to the public “for compensation” because Mill Creek provides its tenants with a separate bill for electrical usage. (Transcript p. 28, line 24 – p. 29, line 8.) Watts suggests that Mill Creek would not run afoul of South Carolina law if it buried the electrical charges in its general rental charges. (Id.) Watts further suggests that whether or not Mill Creek makes a profit off of the electrical charges it imposes upon its tenants is not relevant in determining whether Mill Creek provides electricity “for compensation.” (Transcript p. 30, lines 3 - 13.) Under Watts’ interpretation, any campground or apartment complex that passes on to its tenants

the electrical costs it incurs would be providing electricity “for compensation.” Watts’ interpretation of the term “for compensation” is not consistent with the plain language, purpose and intent of Title 58.

A more reasonable interpretation of the term “for compensation” would require a finding that Mill Creek is making a profit off of the charges it imposes upon its customers for their electrical usage. There is insufficient evidence in the record for the Commission to find that Mill Creek makes a profit. Indeed, ORS concedes that it could not produce any evidence that Mill Creek makes a profit off of its electrical services. (Transcript p. 32, line 23 – p. 33, line 3.) Richard Anderson (“Anderson”) testified concerning the manner in which Mill Creek calculates the electrical bills it sends to its tenants. (Transcript p. 134, line 13 – p. 135, line 3.) Anderson specifically testified that Mill Creek does not receive more money monthly from its campers than it pays to Tri-County. (Transcript p. 135, lines 4 – 23.) Anderson testified that there are eleven Tri-County master meters located on the campground. (Transcript p. 134, line 14.) Electrical lines are run from the eleven master meters to each of Mill Creek’s 80 campsites. (Transcript p. 134, lines 15 – 16.) Each campsite contains a separate meter. Id. Mill Creek uses the bills it receives from Tri-County to determine the average rate per kilowatt hour charged by Tri-County¹. (Transcript p. 134, line 18 – p. 135, line 3.) Mill Creek then applies that rate to the kilowatt hour usage of each individual campsite to bill its tenants. (Transcript p.

¹ Chad Lowder (“Lowder”) of Tri-County testified that Tri-County charges its customers a \$13.00 utility facility charge per month per meter. (Transcript p. 83, lines 14 – 22.) This fee does not appear as an itemized charge on Tri-County’s monthly bills. (Transcript p. 84, lines 9 – 16.) Anderson testified that Mill Creek was unaware that Tri-County charges a \$13.00 administrative fee. (Transcript p. 130, lines 15 – 21.)

134, lines 21 – 23.) Anderson testified that this is the manner in which Mill Creek has operated for more than twenty years. (Transcript p. 128, lines 8 – 12.)

It is clear from the record in this matter that the Commission's denial of ORS's Rule to Show Cause must be affirmed. Mill Creek is not an electrical utility as defined by S.C. Code Ann. § 58-27-10(7). In the event the Commission finds it necessary to clarify its ruling, it is clear that the result should be the same—ORS's Petition for Rule to Show Cause must be denied.

ORS—as well as each of the entities seeking to intervene in this matter and complain about the Commission's ruling—attempts to convert this case into a “generic docket” thereby giving it and others a clear Commission precedent concerning sub-metering. ORS and these other entities do so at great expense to Mill Creek. If ORS and the electrical utilities desire such a broad ruling from the Commission on the issue of sub-metering, they should request a generic docket be opened or propose statutory changes. Mill Creek has devoted enough time and resources to this matter. The Petitions should be denied.

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CERTIFICATE OF SERVICE

I, the undersigned Paralegal, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for *defendant/respondent Mill Creek Marina & Campground, Inc., and/or Richard B. and Diane W. Anderson*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by e-mail as well as mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **RESPONDENTS' OPPOSITION TO PETITIONS FOR REHEARING
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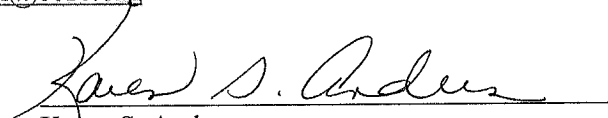
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